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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,345	03/02/2004	Larry B. Gray	JJ0049USACON	2428
27777 7590 09/29/2010 PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
NOTIFICATION DATE		DELIVERY MODE		
09/29/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jnjuspatent@corus.jnj.com
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Office Action Summary

Application No.

10/791,345

Applicant(s)

GRAY ET AL.

Examiner

Vy Q. Bui

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 20-29 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Globerman-5,776,161.

As to claims 20-37, Globerman-'161 (Figs. 14-15; C 7, L 14-31 and reproduced partial of F. 14 below) discloses stent 30 comprising generally straight connector members 35 connecting circumferential springs or cylindrical rings 33. Each of springs or rings 33 comprises circumferentially spaced struts AB and CD. Each strut AB or CD has first end portion, second end portion and a curved portion in between being connected to a 1st and 2nd immediately adjacent struts substantially as recited in the claims.

As to claims 21 and 30, springs or rings 33 comprising wavy struts AB, CD having a curved portion including at least two curves.

As to claims 22, 27-28, 31, 36-37, Globerman-'161 (C. 1, L 21-33) discloses stent of stainless steel (balloon expanding stent) or stent of shape memory (self expanding stent) substantially as recited in the claims.

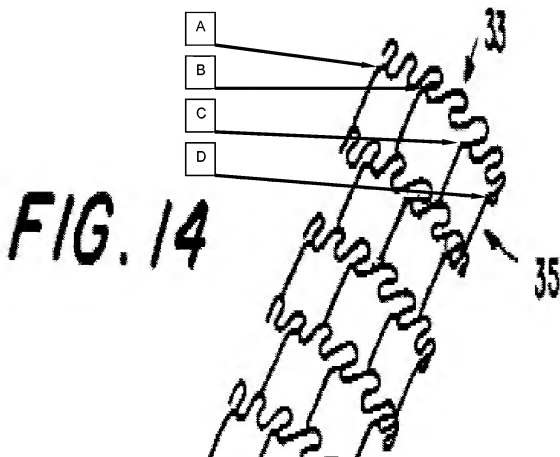
As to claims 23 and 32, struts of springs or rings 33 comprising wavy struts generally in phase with one another.

As to claims 24 and 33, 1st end portion and 2nd end portion of wavy struts AB, BC, CD are curved.

As to claims 25 and 34, wavy struts AB, BC, CD of springs or rings 33 are generally continuous waves along a line segment on the cylindrical surface of the stent and substantially parallel to the longitudinal axis of the stent.

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As to claims 26 and 35, Globerman-'161 (F 2-3 and 14-15) discloses wave rings/springs become straighter in an expanded configuration.



Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

At least claims 20 and 29 are rejected on the ground of nonstatutory double patenting over at least claims 1 and 18 of U. S. Patent No. 5,895,406 and over at least claims 1-6 of U. S. Patent No. 5,980,553 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, such as: circumferential springs or bands or rings, waves or struts.

Response to Arguments

Applicant's arguments filed 7/14/2010 have been fully considered but they are not persuasive.

The Applicant (Remarks, paper 7/14/2010) argued that: "Applicants have treated this rejection as such. Regarding the rejection itself, once again, it is respectfully submitted that the Examiner has oriented the stent in Globerman incorrectly. For instance, the "ring" of Figures 14-15 is *neither* a "cylindrical ring" nor a "cylindrical spring," as claimed. It does not lie along the longitudinal axis, but rather lies *orthogonal* to the longitudinal axis. This can best be seen in reviewing Figure 14 of Globerman."

This is not persuasive for the below reasons:

1. Wavy springs or rings 33 extend in a circumferential direction perpendicular to the longitudinal axis of the stent. However, springs / rings 33 lie on a cylindrical surface of the stent, which cylindrical surface is parallel to the longitudinal axis of the stent, as such, springs or rings 33 are indeed disposed along the longitudinal axis of the stent as recited in the claims.

2. The springs / rings in the present application extend in a direction from a proximal end to a distal end of the stent. Springs / rings 33 of Globerman-'161 extend in a circumferential direction, which direction is normal to the longitudinal axis of the stent. However, there is no language or recitation in the claims to clearly define the orientation of the stent in the present application over the Globerman-'161 stent.

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/
Primary Examiner, Art Unit 3773